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Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

NO. _____

TOBIN LANDSCAPE AND CONSTRUCTION COMPANY, INC.,

Appellant,

v.

JAMES BRAMLETT,

Appellee.

BRIEF FOR THE STATE OF TEXAS AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

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February 10, 1987

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INTEREST OF THE AMICUS

This Court is being asked to decide whether Tex.Rev. Civ.Stat.Ann. Article 5069-1.06 is violative of the Due Process Clause of the Fifth Amendment and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States when applied to impose a penalty for an usurious charge of interest made within the first thirty days after the accrual of a debt. Because Article 5069-1.06 is essential to the enforcement of the State's laws against usury, Texas has a strong interest in the outcome of this case.

STATE LAW

TEX.RIV.CIV.STAT.ANN. Article 5069-1.06:

> (1) Any person who contracts for, charges or receives interest, which is greater than the amount autho-

rized by this Subtitle, shall forfeit to the obligor three times the amount of usurious interest contracted for, charged or received, such usurious interest being the amount the total interest contracted for, charged or received exceeds the amount of interest allowed by law, and reasonable attorney fees fixed by the court except that in no event shall the amount forfeited be less than Two Thousand Dollars or twenty percent of the principle, whichever is the smaller sum; provided, that there shall be no penalty for any usurious interest which results from accidental and bona fide error.

SUMMARY OF THE ARGUMENT

The Texas usury statute[1] at issue in this case does not violate the Due Process Clause of the Fifth Amendment to the Constitution of the United States. Article 5069-1.06 is clear and certain in its language; it puts potential violators on notice as to what conduct will render them liable for its penalties. Further, the statute does not violate the Eight Amendment ban against the infliction of cruel and unusual punishment. The penalties imposed by the statute are not so out of proportion to the severity of the crime so as to render them unconstitutional.[2]

ARGUMENT

I. The Texas usury statute is not unconstitutionally vague.

In order to be held valid under the Due Process Clause, legislation must be clear and explicit in its language such that it puts potential violators on notice as to what conduct

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1. Tex.Rev.Civ.Stat.Ann. Article 5069-1.06.

2. Although Appellant asserts that the statute violates the Equal Protection Clause of the Fourteenth Amendment, he makes no argument as to that assertion in his "Jurisdictional Statement." For this reason, no argument concerning Equal Protection is contained herein, and the State of Texas respectfully urges the Court not to consider that issue.

is proscribed. *Kolender v. Lawson,* 461 U.S. 352 (1983); *Connally v. General Construction Co.,* 269 U.S. 385 (1926). Persons of ordinary intelligence must not have to guess at its meaning or differ as to its application. *Ibid.* Article 5069-1.06 meets this constitutional burden.

Article 5069-1.06 must be read in conjunction with Article 5069-1.03 which provides in relevant part:

> When no specified rate of interest is agreed upon by the parties, interest at the rate of *six percent per annum* shall be allowed on all accounts and contracts ascertaining the sum payable... (emphasis added)

Article 6059-1.03 could hardly be more clear as to what interest is allowable by law. Appellant has brought forth no evidence as to any prior agreement between himself and Appellee to a higher rate of interest. Thus, six percent per annum is the maximum rate allowed by the law.

Appellant alleges in his "Jurisdictional Statement" that "no reasonable person could tell that any *mere* charge of interest within the first thirty days after accrual of a debt could call down on his head such onerous and instant penalties" (emphasis added, Jurisdictional Statement, page 6). The State would question Appellant's definition of a "mere" charge of interest. According to Appellant's own admission, he charged Appellee interest of $93.00 on an account of $6,241.75 during the first 30 days (Jurisdictional Statement, page 4). Any person with average or even lesser intelligence can calculate that such a charge amounted to just under 1.5% interest in the first month. The per annum interest is as easily calculable. By charging $93.00 interest on a $6,241.75 account, Appellant was essentially charging just under 18% interest per annum. A person of very little intelligence can see that 18% is *more than* 6%, the per annum interest charge allowed by the statute. Appellant charged Appellee an interest rate which amounted to *three times* the maximum legal rate absent a prior agreement. Such an interest charge would hardly be considered mere.

The language of the statute is clear. The description of the

proscribed conduct is precise:

> Any person who contacts for, *charges* or receives interest, which is greater than the amount authorized by this Subtitle [six percent per annum as per Article 5609-1.03] shall ... (emphasis added)

Appellant's argument that the statute is unconstitutionally vague is without basis and should not be considered by this Court.

II. The penalties imposed by the Texas usury statute are not unconstitutionally severe.

Appellant makes an Eighth Amendment argument against the statute. (Jurisdictional Statement, page 6). This Court has held that the Eighth Amendment bans not only physically barbarous punishments, but also penalties that are grossly disproportionate to the offense. *Hutto v. Finney,* 437 U.S. 678 (1978). The standard set up by this Court on excessive punishments under the Eighth Amendment is as follows:

> A punishment is "excessive" and unconstitutional if it (1) makes no measurable contribution to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering; or (2) is grossly out of proportion to the severity of the crime.

Coker v. Georgia, 433 U.S. 584 (1977). The State of Texas does not dispute that the penalties for violation of its usury statute are severe. The stringency of the penalties demonstrates that the legislature takes a dim view of vendors who engage in the abusive practice of usury. It is the policy of the State to protect consumers from such vendors. The Texas usury statute was designed to aid in this protection, to deter violators. Appellant can hardly argue that such penalties do not deter usurious acts of vendors. Nor can Appellate argue that these stringent penalties "make no measurable contribution to acceptable goals of punishment." The State of Texas views the

crime of usury as a very serious one, and the penalties imposed on violators bear a rational relationship to the severity of the crime. For these reasons, the penalties under Article 5609-1.06 do not violate the Eighth Amendment ban against cruel and unusual punishment and are not unconstitutionally severe.

CONCLUSION

For the foregoing reasons, Amicus State of Texas argues this Court to affirm the decision of the court below on the ground that the challenged statute does not violate the Fifth or Eighth Amendments to the United States Constitution.

Respectfully submitted,

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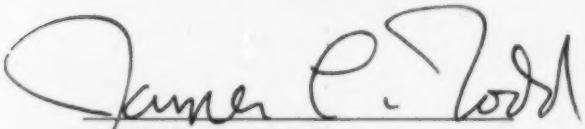

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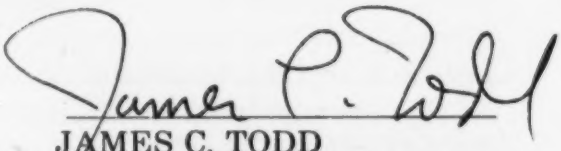
Chief, Education/Civil Rights

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief for the State of Texas as Amicus Curiae in Support of Respondents has been sent by certified mail, return receipt requested on this the 13th day of February, 1987, to Mr. Joe B. Abbey, 3110 Olympia & New York Building, 1999 Bryan Street, Dallas, Texas 75201.



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